

Florida Attorney General
Advisory Legal Opinion
Number: AGO 93-25
Date: March 25, 1993
Subject: Authority of county/ constitutional gas tax

Mr. Randy Ludacer
Monroe County Attorney
310 Fleming Street
Key West, Florida 33040

RE: COUNTIES--SECOND GAS TAX--TAXATION--ROADS--
CONSTITUTIONAL GAS TAX: authority of county
to use portion of constitutional gas tax for
routine maintenance of county roads.
s. 90(5), Art. XII, State Const.
ss. 334.03(7), F.S.

Dear Mr. Ludacer:

You have asked for my opinion on substantially the following
question:

May Monroe County use the proceeds from the 80 percent
portion of the constitutional gas tax authorized by
s. 90(5), Art. XII, State Const., for routine
maintenance of county roads?

In sum:

The 1980 amendment of s. 90(5), Art. XII, State Const.,
changed the permitted uses of surplus second gas tax funds,
so that these funds may be used by counties to maintain
roads within the county road system, as defined in
s. 334.03(7), F.S.

According to your letter, the majority of Monroe County's
population is located in the Florida Keys portion of the
county. This area has been designated an area of critical
state concern and this designation, coupled with other land
planning and development regulations, has drastically reduced
the need for new roads in Monroe County. Thus, you question
the ability of the county to utilize its share of the surplus
second gas tax for the maintenance of those existing roads
within the county road system, rather than the construction
of new roads.

As you have noted, opinions of this office rendered prior to
the 1980 amendment of s. 90(5), Art. XII, State Const.,
concluded that a county's use of surplus second gas tax
funds was limited to the construction of roads and that
these revenues could not be lawfully used for the
maintenance or repair of existing roads and bridges. These
opinions also concluded that surplus second gas tax funds

returned to a county could not be used for the purchase of road machinery, such funds being restricted to the acquisition of rights-of-way and construction of roads, and further that such funds could not be used to resurface existing roads, since resurfacing is treated as maintenance.[1]

However, s. 90(5), Art. XII, State Const., was amended in 1980, and provides, in part, that:

The proceeds of the "second gas tax" subject to allocation to the several counties under this paragraph (5) shall be used first, for the payment of obligations pledging revenues allocated pursuant to Article IX, Section 16, of the Constitution of 1885, as amended, and any refundings thereof; second, for the payment of debt service on bonds issued as provided by this paragraph (5) to finance the acquisition and construction of roads as defined by law; and third, for the acquisition and construction of roads and for road maintenance as authorized by law. (e.s.)

The 1980 amendment added the phrase "and for road maintenance as authorized by law" at the end of the fourth sentence of sub-section 90(5). Thus, the changes in s. 90(5), Art. XII, State Const., affected by the 1980 amendments would act to modify those earlier opinions.[2] The language contained in the 1980 amendment, which is underlined above, plainly authorizes counties to spend surplus second gas tax funds for road maintenance if authorized by law.[3] An examination of relevant statutes indicates that counties are authorized by law to perform road repair and maintenance.

The statutes specifically vest responsibility for the county road system in the county commissioners as follows:

The commissioners are invested with the general superintendence and control of the county roads and structures within their respective counties, and they may establish new roads, change and discontinue old roads, and keep the roads in good repair in the manner herein provided. They are responsible for establishing the width and grade of such roads and structures in their respective counties.[4] (e.s.)

In addition, s. 125.01(1)(m), F.S. (1992 Supp.), states that counties have the power to provide roads. Reading s. 125.01(1)(m), F.S. (1992 Supp.), together with s.125.01(3)(a) and (b), F.S. (1992 Supp.), which recognizes that counties have the implied authority to accomplish those specifically enumerated powers and duties set forth in s. 125.01, F.S. (1992 Supp.), and secures constitutional home rule powers to counties, it is clear that counties are authorized to repair and maintain roads which are a county responsibility.[5]

Therefore, it is my opinion that s. 90(5), Art. XII, State Const., authorizes counties to use surplus second gas tax funds for the maintenance of roads within the county road system, as defined in s. 334.03(7), F.S.[6]

Sincerely,

Robert A. Butterworth
Attorney General

RAB/tgk

[1] See, AGO's 79-104 and 79-43.

[2] See, AGO 82-55 ("[t]o the extent that the conclusions in [AGO's 79-104 and 79-43] pertain to the use of surplus second gas tax revenues for maintenance of roads and bridges, the 1980 amendment operates to modify those conclusions.")

[3] Cf., In re Advisory Opinion to the Governor, 223 So.2d 35, 39 (Fla. 1969), and City of St. Petersburg v. Briley, Wild & Assoc., Inc., 239 So.2d 817, 822 (Fla. 1970) (holding that courts are obligated to give effect to language contained in a constitutional provision according to its plain meaning, and that if the language is clear, courts have no power to go outside the bounds of the provision in search of a different meaning).

[4] See, s. 336.02(1)(a), F.S. See also, s. 334.01(7), F.S., defining the "[c]ounty road system" as "all collector roads in the unincorporated areas and all extensions of such collector roads into and through any incorporated areas, all local roads in the unincorporated areas, and all urban minor arterial roads not in the State Highway System."

[5] See also, Speer v. Olson, 367 So.2d 207 (Fla. 1978), and s. 1(f), Art. VIII, State Const.

[6] See also, AGO 82-55. And see, AGO 83-26 (the county may, with those exceptions noted, use the surplus of the constitutional gas tax to lease or purchase road equipment necessary for or directly connected with and necessarily incidental to carrying out its responsibilities for the construction and maintenance of roads); and AGO 84-6 (a county is authorized to utilize the surplus of the constitutional gas tax to purchase and install traffic control devices on existing roads within the county road system). Cf., AGO 92-20 which concludes that, while s. 336.025(7)(b), F.S., does not authorize the expenditure of local option gas tax revenues for the construction of a garage and maintenance equipment, such funds may be used for roadway and right-of-way maintenance.

Florida Attorney General
Advisory Legal Opinion
Number: AGO 93-12
Date: February 9, 1993
Subject: Distribution of local option gas tax

The Honorable J.E. Cooksey
Chairman
Jefferson County Board of
County Commissioners
Room 10, County Courthouse
Monticello, Florida 32344

RE: COUNTIES--MUNICIPALITIES--TAXES--LOCAL OPTION GAS TAX--
distribution of local option gas tax to eligible
municipalities governed by s. 336.025, F.S. (1992 Supp.).
s. 336.025, F.S. (1992 Supp.).

Dear Chairman Cooksey:

You ask substantially the following question:

Must a county share local option gas tax levied
pursuant to s. 336.025, F.S. (1992 Supp.), with an
eligible municipality within the county, when the
county is using such tax proceeds to fund
infrastructure rather than transportation?[1]

In sum:

A county eligible to levy a local option gas tax
pursuant to s. 336.025, F.S. (1992 Supp.), must
distribute the proceeds to eligible municipalities
as directed therein, regardless of whether the funds
are used for infrastructure.

Section 336.025, F.S. (1992 Supp.), allows counties to impose a
local option gas tax upon every gallon of motor fuel and special
fuel sold in a county and taxed under the provisions of Part I
or Part II, Ch. 206, F.S. (1992 Supp.).[2] Only those
municipalities and counties eligible for participation in the
distribution of moneys under Parts II and VI of Ch. 218, F.S.,
are eligible to receive moneys under this section.[3]

A county may levy the tax by ordinance adopted by a majority
vote of the governing body or approval by referendum.[4] Under
this procedure,

{t}he county may, prior to June 1, establish by
interlocal agreement with one or more of the
municipalities located therein, representing a
majority of the population of the incorporated
area within the county, a distribution formula for
dividing the entire proceeds of the local option gas

tax among the county government and all eligible municipalities within the county.[5] (e.s.)

In the absence of an interlocal agreement, the county may, prior to June 10, adopt a resolution of intent to levy the tax.[6] If no interlocal agreement or resolution is adopted, municipalities representing more than 50 percent of the county population may, prior to June 20, adopt uniform resolutions approving the local option tax, establishing the duration of the levy and the rate authorized, and setting the date for a countywide referendum on whether to impose the tax.[7]

In the event the tax is levied by county resolution or by uniform resolutions of the municipalities, the proceeds of the tax must be distributed "among the county government and eligible municipalities based on the transportation expenditures of each for the immediately preceding 5 fiscal years." [8] Any newly incorporated municipality which is eligible for participation in the distribution of moneys under Parts II and VI, Ch. 218, F.S., located in a county levying the local option gas tax is also entitled to receive a share of the tax revenues.[9]

The Legislature has made it clear, by the plain language of the statute, that proceeds from the local option gas tax are to be distributed among the county government and the eligible municipalities within the county. Where the Legislature has prescribed the manner in which a thing is to be done, it is, in effect, a prohibition against its being done in any other way.[10]

Generally, local option gas tax proceeds received pursuant to s. 336.025, F.S. (1992 Supp.), may be used by the county and municipal governments only for transportation expenditures.[11] However, s. 336.025(8), F.S. (1992 Supp.), provides that counties with a population of 50,000 or less on April 1, 1992, may use the tax proceeds to fund infrastructure projects, if consistent with the county's comprehensive plan and only after the local government, prior to the fiscal year in which the funds will be used, has held a duly noticed public hearing and adopted a resolution certifying that the local government has met all of the transportation needs identified in its comprehensive plan. Thus, under the specified conditions, a county with a population of 50,000 or less may use the proceeds from the local option gas tax to fund infrastructure projects. There is nothing in the statute, however, indicating that a county using its gas tax proceeds for infrastructure purposes is entitled to all of the proceeds from the gas tax in the county, to the exclusion of the municipalities eligible to receive distributions pursuant to s. 336.025, F.S. (1992 Supp.). Absent such authority, it does not appear that Jefferson County may alter the distribution of proceeds from the local option gas tax to deprive eligible municipalities of their share of the tax proceeds.

Accordingly, a county eligible to levy a local option gas tax pursuant to s. 336.025, F.S. (1992 Supp.), must distribute the proceeds to eligible municipalities within the county as directed therein, regardless of whether the funds are used for

transportation or infrastructure.

Sincerely,

Robert A. Butterworth
Attorney General

RAB/tls

[1] Your second question regarding whether a municipality may be required to participate in the funding of a jail necessarily involves comment upon the activities of another governmental entity. Absent a request from the governmental entity in question, this office may not offer a legal opinion. See, s. 16.01(3), F.S., and Statement Concerning Attorney General Opinions, Annual Report of the Attorney General, p. x, (authority of this office to render legal opinions limited to public officials or entities at the request of the public official or entity and on questions relating to their own official duties).

[2] Part I, Ch. 206, F.S. (1992 Supp.), allows taxation of motor fuels and Part II, Ch. 206, F.S. (1992 Supp.), allows taxation of special fuels.

[3] Section 336.025(6), F.S. (1992 Supp.). Part II, Ch. 218, F.S., the Florida Revenue Sharing Act of 1972, allows those units of local government meeting the requirements in s. 218.23, F.S., to share in tax proceeds deposited in the revenue sharing trust funds created pursuant to the act. Part VI, Ch. 218, F.S., allows eligible county or municipal governments to receive a portion of the local government half-cent sales tax provided therein.

[4] Section 336.025(3)(a), F.S. (1992 Supp.).

[5] Section 336.025(3)(a)1., F.S. (1992 Supp.).

[6] Section 336.025(3)(a)2., F.S. (1992 Supp.).

[7] Section 336.025(3)(b), F.S. (1992 Supp.).

[8] Section 336.025(4)(a), F.S. (1992 Supp.).

[9] Section 336.025(4)(b), F.S. (1992 Supp.).

[10] See, *Alsop v. Pierce*, 19 So.2d 799, 805-806 (Fla. 1944) (when the controlling law directs how a thing shall be done that is, in effect, a prohibition against its being done in any other way).

[11] Section 336.025(1)(c), F.S. (1992 Supp.). "Transportation expenditures" is defined in s. 336.025(7), F.S. (1992 Supp.), to mean expenditures for the following programs: public

transportation operations and maintenance; roadway and right-of-way maintenance and equipment; roadway and right-of-way drainage; street lighting; traffic signs, traffic engineering, signalization, and pavement markings; bridge maintenance and operation; or debt service and current expenditures for transportation capital projects in the foregoing program areas, including construction or reconstruction of roads.

Florida Attorney General
Advisory Legal Opinion
Number: AGO 2002-02
Date: January 3, 2002
Subject: Local option fuel tax, used for bicycle paths

Mr. Michael Dyer
Attorney for Town of Ponce Inlet
Post Office Box 15110
Daytona Beach, Florida 32115

RE: MUNICIPALITIES;LOCAL OPTION FUEL
TAX;BICYCLES;TRANSPORTATION;authorized uses for local option fuel tax on
motor fuel and diesel fuel. s. 336.025, Fla. Stat.

Dear Mr. Dyer:

As town attorney for the Town of Ponce Inlet, you have asked for my
opinion on substantially the following question:

Is the Town of Ponce Inlet authorized to expend local option fuel tax
moneys collected pursuant to section 336.025, Florida Statutes, for the
construction of bicycle paths adjacent to roads or streets?

In sum:

Tax moneys collected pursuant to section 336.025, Florida Statutes, may
not be used to construct bicycle paths separate and apart from roads or
streets. However, several other possible revenue sources such as the
constitutional fuel tax and special assessments are available for bicycle
path construction.

According to your letter, the Town of Ponce Inlet is in the process of
planning a system of bicycle paths to be located adjacent to roadways and
streets throughout the town. These will take the form of separate bicycle
path construction apart from the bed of the roadway. You have asked
whether the construction of these bicycle paths may be funded from
revenues generated from a local option fuel tax authorized by section
336.025, Florida Statutes.

Section 336.025, Florida Statutes, authorizes the levy of local option
fuel taxes on motor fuel and diesel fuel for local transportation system
projects. Section 336.025(1)(a)2., Florida Statutes, provides that
"[c]ounty and municipal governments shall utilize moneys received pursuant
to this paragraph only for transportation expenditures."

Further, section 336.025(1)(b)3., Florida Statutes, states:

"County and municipal governments shall utilize moneys received pursuant
to this paragraph only for transportation expenditures needed to meet the
requirements of the capital improvements element of an adopted
comprehensive plan. For purposes of this paragraph, expenditures for the
construction of new roads, the reconstruction or resurfacing of existing
paved roads, or the paving of existing graded roads shall be deemed to

increase capacity and such projects shall be included in the capital improvements element of an adopted comprehensive plan. Expenditures for purposes of this paragraph shall not include routine maintenance of roads."

"Transportation expenditures" are defined for purposes of this statute as:

"[E]xpenditures by the local government from local or state shared revenue sources, excluding expenditures of bond proceeds, for the following programs:

- (a) Public transportation operations and maintenance.
 - (b) Roadway and right-of-way maintenance and equipment and structures used primarily for the storage and maintenance of such equipment.
 - (c) Roadway and right-of-way drainage.
 - (d) Street lighting.
 - (e) Traffic signs, traffic engineering, signalization, and pavement markings.
 - (f) Bridge maintenance and operation.
 - (g) Debt service and current expenditures for transportation capital projects in the foregoing program areas, including construction or reconstruction of roads."
- [1]

In addition to these uses, counties that had a population of 50,000 or less on April 1, 1992, may use local option gas tax revenues to fund infrastructure projects that are consistent with the local government's approved comprehensive plan.[2]

Where a statute enumerates the things upon which it operates, it is ordinarily construed as excluding from its operation all things not expressly mentioned.[3] Thus, a listing of expenditures allowed for local option gas tax revenues precludes use of such revenues for any other purpose.

This office has, over the years, considered the expenditure of local option fuel taxes in a number of situations.[4] For example, Attorney General's Opinion 99-70, concluded that providing adequate road and right-of-way drainage in the form of canals or a retention pond appeared to be a basic requirement for an efficient drainage program and would have the appropriate nexus to be considered a valid transportation expenditure. Thus, local option fuel tax revenues could be used to fund the dredging of canals that the city maintained as part of the city's road and right-of-way drainage program.

In contrast, in Attorney General's Opinion 00-37 this office was asked to determine whether tax moneys collected pursuant to section 336.025, Florida Statutes, could be used for sidewalk construction as a stand-alone project. The sidewalks were to be constructed or extended without any accompanying road construction, reconstruction or maintenance. The opinion reviewed the definition of "transportation expenditures" and concluded that the construction of sidewalks does not fall within the scope of section 336.025, Florida Statutes, for the use of a local option fuel tax.

Like sidewalks, bicycle paths that are constructed separately from roads and streets would appear to be outside the scope of "transportation expenditures" as defined in section 336.025(7), Florida Statutes.

While section 336.025, Florida Statutes, does not authorize the use of

local option fuel taxes for the construction of bicycle paths, other revenue sources are available to accomplish this type of project. Section 206.47(7), Florida Statutes, authorizes the use of the constitutional fuel tax[5] for "the construction and installation of traffic signals, sidewalks, bicycle paths, and landscaping." [6] Further, a municipality may provide improvements such as bicycle paths by levying and collecting special assessments on the property that has been specially benefitted by such improvements as provided in section 170.01(1)(a), Florida Statutes. Thus, while the Town of Ponce Inlet may not use local option fuel tax moneys to construct bicycle paths, a number of options exist for funding this project.

Accordingly, it is my opinion that local option fuel tax funds may not be used to construct bicycle paths separate and apart from the road or street, as such a project would not be within the purposes authorized by section 336.025, Florida Statutes.

Sincerely,

Robert A. Butterworth
Attorney General

RAB/tgh

[1] Section 336.025(7), Fla. Stat.

[2] See, s. 336.025(8), Fla. Stat.

[3] See, *Thayer v. State*, 335 So. 2d 815, 817 (Fla. 1976).

[4] See, e.g., Ops. Att'y Gen. Fla.'s 90-79 (1990) (local option gas tax revenues used to fund paratransit or special transportation services to the transportation disadvantaged); 94-20 (1994) (use of local option gas tax revenues to repair and maintain airport runways); 97-25 (1997) (use of local option fuel tax revenues for public transportation operations and maintenance expenditures); 99-70 (1999) (use of local option fuel taxes for dredging canals); 00-37 (2000) (use of local option fuel tax revenues for sidewalk construction and tree trimming projects).

[5] See, s. 206.41(1)(a), Fla. Stat, which states that this tax is levied by s. 16, Art. IX, of the 1885 Florida Constitution, as amended, and continued by s. 9(c), Art. XII of the 1968 Florida Constitution.

[6] And see, Op. Att'y Gen. Fla. 00-37 (2000).



1.00 / 17.00
BOARD OF COUNTY COMMISSIONERS

Mayor Obde M. Spehar, District 1
Mayor Pro Tem Murray E. Nelson, District 5
George Neugent, District 2
Charles "Sonny" McCoy, District 3
David P. Rice, District 4

Monroe County Board of County Commissioners
Office of the County Administrator
The Historic Gato Cigar Factory
1100 Simonton Street, Suite 205
Key West, Florida 33040
(305) 292-4441 - Phone
(305) 292-4544 - Fax



March 21, 2003

Mr. Charles Baldwin, P.E.
Islamorada Village Manager
P.O. Box 568
Islamorada, FL 33036

Dear Mr. Baldwin:

I am in receipt of your letter of March 7, 2003 and the attachments in reference to the Constitutional Fuel Tax distribution issue. As usual you have presented substantial amounts of research to support your position.

I shall ask County staff and County counsel to review the issue and will discuss it with the County Commission at the April meeting. At that point if the Commission wishes to enter a discussion with the municipalities and the County concerning this issue I shall be in contact with you to schedule the meetings. I know you are aware that there are other issues surrounding the gas tax distribution and we will be prepared to review those with you also.

Once again, thank you for your presentation.

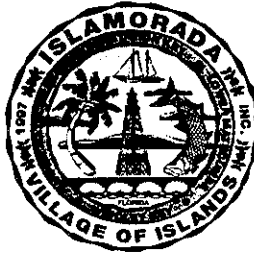
Very truly yours,

James L. Roberts
County Administrator

JLR:pe

cc: Board of County Commissioners
Richard Collins, County Attorney
Dent Pierce, Division Director Public Works
David Koppel, Engineer
Sheila Barker, Division Director Administrative Services

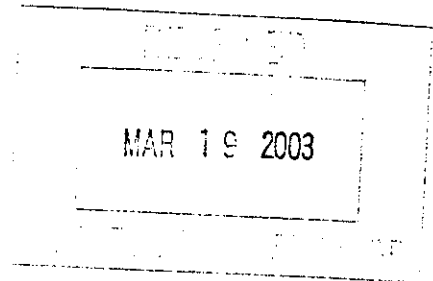
MAYOR MARK GREGG
VICE MAYOR MIKE FORSTER
COUNCILMAN GEORGE GEISLER



COUNCILMAN BOB JOHNSON
COUNCILMAN CHRIS SANTE

March 7, 2003

Mr. Jim Roberts
County Administrator
1100 Simonton St.
Suite 205
Key West, FL 33040



RE: Constitutional Fuel Tax Distribution

Dear Mr. Roberts,

For some time this Village and other members of the Florida Keys Coalition of Cities has been discussing and evaluating the subject fuel tax. I am attaching for your review and information documents pertaining to this matter.

1. Extract from 2002 Local Government Financial Information Handbook detailing the Constitutional Fuel Tax program.
2. Village of Islamorada and City of Marathon Resolutions requesting Monroe County to distribute the appropriate share of the County's Constitutional Fuel Tax to all Incorporated Municipalities within Monroe County. Similar resolutions are anticipated from the remaining municipalities.

I suggest that appropriate Municipal and County representatives meet within the next few weeks to develop an equitable distribution formula which could then be considered by your Commission.

The following presents a suggested distribution formula. All components have Unincorporated Monroe County as a base and is modeled after the existing state/county formula. I believe it is appropriate to use this formulation since this fuel tax is restricted in use to the acquisition, construction and maintenance of roads and related appurtenances:

- A. Monroe County Square Miles: 997 total square miles
- B. Monroe County Population: 81,140 total population
- C. Monroe County Road Miles: 303 total unincorporated

Components A & B would each be worth 25% of distribution factor. Component C would generate 50% of the distribution factor.

ILLUSTRATIVE APPLICATION ONLY - FOR DISCUSSION

Islamorada, Village of Islands	\$325,886
A. 7.11 sq. mi. (Land)	
B. 6,846	
C. 51 mi	
Marathon	\$416,820
A. 8.65 sq. mi. (Land)	
B. 10,255	
C. 59 mi.	
Key West	\$757,585
A. 5.95 sq. mi. (Land)	
B. 25,478	
C. 80.1 mi.	
Layton	\$ 15,377
A. 0.22 sq. mi. (Land)	
B. 186	
C. 3 mi.	
Key Colony Beach	\$ 45,899
A. 0.51 sq. mi. (Land)	
B. 788	
C. 8 mi.	
Total Municipal Distribution:	\$1,561,567
Total Unincorporated:	<u>879,949</u>
	\$2,441,516
Unincorporated Monroe County	
A. $996.91 - 22.44 = 974.47$ sq. mi. (Land)	
B. $79,589 - 43,553 = 36,036$	
C. 303 unincorporated	

Monroe County Constitutional Fuel Tax Formula
Estimated Monroe County Revenue 2002/03: \$2,441,516

SAMPLE FORMULA APPLICATION

<u>Islamorada</u>		<u>Distribution Factor</u>
(1/4) A. $\frac{7.11}{974.47}$	= 0.007296	0.001824
(1/4) B. $\frac{6,846}{36,036}$	= 0.189977	0.047494

$$(1/2) \text{ C. } \frac{51}{303} = 0.168317 \quad \underline{0.084159}$$

$$0.133477$$

$$\text{\$2,441,516 (0.133477) = \$325,886}$$

Marathon

$$\text{A. } \frac{8.65}{974.47} = 0.008877 \quad 0.002219$$

$$\text{B. } \frac{10,255}{36,036} = 0.284577 \quad 0.071144$$

$$\text{C. } \frac{59}{303} = 0.194719 \quad \underline{0.097359}$$

$$0.170722$$

$$\text{\$2,441,516 (0.170722) = \$416,820}$$

Key West

$$\text{A. } \frac{5.95}{974.47} = 0.006106 \quad 0.001526$$

$$\text{B. } \frac{25,478}{36,036} = 0.707015 \quad 0.176754$$

$$\text{C. } \frac{80}{303} = 0.264026 \quad \underline{0.132013}$$

$$0.310293$$

$$\text{\$2,441,516 (0.310293) = \$757,585}$$

Layton

$$\text{A. } \frac{0.22}{974.47} = 0.000226 \quad 0.000057$$

$$\text{B. } \frac{186}{36,036} = 0.005162 \quad 0.0012905$$

$$\text{C. } \frac{3}{303} = 0.009901 \quad \underline{0.004950}$$

$$0.006298$$

$$\text{\$2,441,516 (0.006297) = \$15,377}$$

Key Colony Beach

$$\text{A. } \frac{0.51}{974.47} = 0.000523 \quad 0.000131$$

$$\text{B. } \frac{788}{36,036} = 0.021867 \quad 0.005467$$

$$\text{C. } \frac{8}{303} = 0.026403 \quad \underline{0.013201}$$

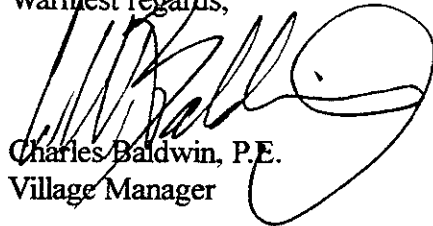
$$0.018799$$

$$\text{\$2,441,516 (0.018799) = \$45,899}$$

March 10, 2003

As each of us is approaching our preliminary budget preparation early resolution of this matter would be helpful.

Warmest regards,

A large, stylized handwritten signature in black ink, appearing to read 'C. Baldwin', is written over the typed name and title.

Charles Baldwin, P.E.
Village Manager

Attachments

cc. Islamorada, Village of Islands, Mayor and Council
Monroe County Board of County Commissioners
City of Marathon, Mayor and Manager
City of Key West, Mayor and Manager
City of Layton, Mayor
City of Key Colony Beach, Mayor

Constitutional Fuel Tax

Article XII, Section 9(c), *Florida Constitution*

Sections 206.41(1)(a), 206.47, 336.023, and 336.024, *Florida Statutes*

Brief Overview

In 1941, the Florida Legislature proposed a constitutional amendment to levy a tax of 2 cents per gallon on motor fuel. Voters approved the tax in 1943. The original intent of the tax was to cover the costs of state road construction. In its current form, the tax is a revenue source for counties only.

The proceeds are allocated via the distribution formula to the extent necessary to comply with all obligations to or for the benefit of holders of bonds, revenue certificates, and tax anticipation certificates or any refundings secured by any portion of the tax proceeds allocated under the provisions of s.16, Art.IX of the State Constitution of 1885, as amended. After complying with the necessary debt service obligations, a county's surplus funds are distributed to its governing body.

2002 General Law Amendments

Legislation passed during the 2002 legislative sessions did not affect provisions related to this tax.

Eligibility Requirements

All counties are eligible to receive proceeds.

Administrative Procedures

The tax is collected by the Department of Revenue and is transferred monthly to the State Board of Administration (SBA) for distribution to the counties. There are no deductions from the proceeds for the General Revenue Service Charges authorized in s. 215.20, F.S. However, the SBA deducts administrative costs from the proceeds.¹

Distribution of Proceeds

The SBA calculates a monthly allocation for each county based on the constitutional formula and credits to the account of each county the amount allocated pursuant to the formula. The distribution formula is comprised of three components: an area component, a population component, and a collection component. A distribution factor, based on these three components, is calculated annually for each county in the form of

¹ Pursuant to Article XII, section 9(c)(4), *Florida Constitution*.

weighted county-to-state ratios. To determine each county's monthly allocation, the monthly statewide tax receipts are multiplied by each county's distribution factor.

A county's monthly distribution is determined as follows:

1. First, the distribution factor for each county is calculated as follows:

$$\begin{aligned} & \frac{1}{4} \quad \times \quad \frac{\text{County Area}}{\text{State Area}} \\ + & \quad \frac{1}{4} \quad \times \quad \frac{\text{County Population}}{\text{State Population}} \\ + & \quad \frac{1}{2} \quad \times \quad \frac{\text{Number of Motor Fuel Gallons Sold in County}}{\text{Number of Motor Fuel Gallons Sold Statewide}} \\ = & \quad \text{County's Distribution Factor} \end{aligned}$$

2. Second, the monthly allocation for each county is calculated as follows:

$$\text{Monthly Statewide Constitutional Fuel Tax Receipts} \times \text{County's Distribution Factor} = \text{County's Monthly Allocation}$$

The State Board of Administration shall annually use the funds in each county account to first pay the current principal and any interest maturing of bonds issued for road and bridge purposes as well as gasoline or other fuel tax anticipation certificates of the county or special road and bridge district, or other special taxing district. After satisfying this obligation, the funds shall be used to establish a sinking fund account to meet future requirements of such bonds and gasoline or other fuel tax anticipation certificates where it appears the anticipated income for any year or years will not equal the scheduled payments.

Any remaining proceeds in each county account are surplus funds and shall be remitted by the State Board of Administration as follows:

1. 80 percent to the Department of Transportation for the construction or reconstruction of state roads and bridges within the county or for the lease or purchase of bridges connecting state highways within the county; and
2. 20 percent to the Board of County Commissioners for use on roads and bridges within the county.

In each fiscal year, the SBA will distribute the 80 percent surplus fuel tax proceeds allocated to each county to the debt service requirements of each bond issue pledging the 80 percent surplus accruing to that county. The remaining 80 percent surplus fuel tax funds will be advanced monthly to the Board of County Commissioners for use in the county.

In each fiscal year, the SBA will distribute the 20 percent surplus fuel tax proceeds allocated to each county to the debt service requirements of each bond issue pledging the 20 percent surplus accruing to that county. The remaining 20 percent surplus fuel tax funds will be advanced monthly to the Board of County Commissioners for use in the county.

Pursuant to s. 336.024, F.S., the SBA shall assume the responsibility for distribution of the counties' 80 percent portion in the same manner as the 20 percent portion is currently distributed pursuant to s. 206.47, F.S. However, the SBA shall ensure that county funds are made available to the Department of Transportation to be held in escrow for any construction underway on behalf of the county pursuant to resolution of the county's governing body.

Authorized Uses

Current law requires that the proceeds credited to each county must first be used to meet the debt service requirements, if any, of the debt assumed or refunded by the State Board of Administration payable from the tax. The remaining fuel tax funds credited to each county are surplus funds and shall be distributed as provided by law.

The surplus funds shall be used for the acquisition, construction, and maintenance of roads. Maintenance means periodic and routine maintenance, as defined in s. 334.03, F.S., and may include the construction and installation of traffic signals, sidewalks, bicycle paths, and landscaping. The funds may be used as matching funds for any federal, state, or private grant specifically related to these purposes.

Periodic maintenance, as defined in s. 334.03(19), F.S., means activities that are large in scope and require a major work effort to restore deteriorated components of the transportation system to a safe and serviceable condition. Such efforts may include, but not be limited to, the repair of large bridge structures, major repairs to bridges and bridge systems, and the mineral sealing of lengthy sections of roadway.

Routine maintenance is defined in s. 334.03(24), F.S., to mean minor repairs and associated tasks necessary to maintain a safe and efficient transportation system. The term includes pavement patching; shoulder repair; cleaning and repair of drainage ditches, traffic signs, and structures; mowing; bridge inspection and maintenance; pavement striping; litter cleanup; and other similar activities.

Pursuant to s. 336.023, F.S., any county that agreed prior to July 1, 1977, by resolution, to use the surplus proceeds to provide a connecting road to a planned interchange on the interstate system shall provide the connecting road. Any surplus, not otherwise used to provide the connecting road, shall be used on any road in the county at the discretion of the county's governing body.

Relevant Attorney General Opinions

Florida's Attorney General has issued a number of opinions relevant to this revenue source. The full texts of those opinions are available via the searchable online database of legal opinions (<http://legal.firm.edu/opinions/index.html>).

In a recent online search, the LCIR staff identified the following opinions pertaining to this revenue source:

<u>Opinion #</u>	<u>Subject</u>
79-41	County transportation trust funds, auditing
79-43	Surplus constitutional fuel tax, authorized use
79-104	Surplus constitutional fuel tax, authorized use
80-22	Surplus constitutional fuel tax, authorized use
82-55	Surplus constitutional fuel tax, authorized use
83-22	Surplus constitutional fuel tax, authorized use
83-26	Surplus constitutional fuel tax, authorized use
84-06	Surplus constitutional fuel tax, authorized use
85-53	Service charge charged by clerk from gas tax money
85-93	Constitutional fuel tax, payment of service charges and administrative fees
93-25	Surplus constitutional fuel tax, authorized use

Local government officials seeking more clarification should review the opinions in their entirety. The statutory language pertaining to this revenue source has been amended since its authorization. The reader should keep the date of the opinion in mind when reviewing its relevance to current law or any interpretations that have been articulated in Florida case law.

Current Year's Revenues

Table 1 displays the estimated distributions by county for local fiscal year 2002-03, as calculated by the Department of Revenue. In addition to the estimated distribution, the table also lists the area, population, and collection components as well as the distribution factor for each county. The estimates are based on a statewide estimate of total constitutional fuel tax collections. These estimates are net of the State Board of Administration's administrative deductions. Inquiries regarding the Department of Revenue's estimates should be addressed to the Office of Research and Analysis at (850) 488-2900 or Suncom 278-2900.

Prior Years' Revenues

Several additional tables summarizing prior years' distributions to counties are available via the LCIR's website (<http://fcn.state.fl.us/lcir/databank/revenues.html>).